With reference to the funeral expenses agreed at $700, the widow admitted having received it, so I would ignore this. There will, therefore, be judgment for $25,196 and costs.

I would also make a suggestion that the balance of compensation with the State Welfare Officer should be refunded to the employer. If $250 had indeed been sent to the deceased's mother in China and paid from the compensation, the widow must refund this money to the State Welfare Officer.

With reference to the damages I would distribute as follows:—

Widow	$14,196
Woon Kim On	1,000
Voon Kiew Foong ..	1,000
Voon Kio Soo	1,200
Voon Sow Kong	1,500
Voon Shu Kong	1,800
Voon Keok Kiau	2,000
Bon Chong Heng	2,500

The shares of infants to be deposited in the name of the Public Trustee, Kuala Lumpur, as trustee, with Hongkong & Shanghai Bank, Kuala Lumpur, until the infants reach the age of 21 years.

Order accordingly.

Solicitors:—*Murphy & Dunbar; Braddell Bros.*

JAGAT SINGH v. ARTHUR HENG

[O.C.J. (Choor Singh J.) November 18, 1963]

[Singapore — Suit No. 1607 of 1961]

Moneylending—Moneylenders Ordinance (Cap. 193) and Moneylenders Ordinance, 1959—Payment of smaller sum by third party to discharge larger sum—Accord and satisfaction—Principle applicable.

Though payment of a smaller sum cannot be a good consideration for accord and satisfaction of a claim for a larger one, yet if there is anything which can be a new consideration and a new benefit to the person entitled to the larger sum, that would support accord and satisfaction.

If a stranger pays a part of a debt in discharge of the whole, the debt is gone because it would be fraud on the stranger to proceed.

Bidder v. *Bridges* (3) and *Hirachand Punamchand* v. *Temple* (4) applied.

Cases referred to:—

(1) *Surain Singh* v. *Yatim Eusope* [1962] M.L.J. 223.

(2) *Foakes* v. *Beer* (1884) 9 App. Cas. 605.

(3) *Bidder* v. *Bridges* (1887) 37 Ch. D. 406.

(4) *Hirachand Punamchand* v. *Temple* [1911] 2 K.B. 340.

ACTION.

R. Ramason for the plaintiff.

L. Rayner for the defendant.

Choor Singh J.: At the conclusion of the trial of this action, I dismissed the plaintiff's claim with costs and intimated that I would give my reasons later. This I now proceed to do.

This action was brought to recover the sum of $1,322.97 alleged to be due upon a promissory note dated the 1st May, 1958. It was not disputed that at the time of making the loan the plaintiff was a moneylender within the meaning of the term as defined in the Moneylenders Ordinance (Chapter 193), (hereinafter referred to as the old Ordinance). The uncontradicted evidence of the plaintiff was that he ceased to carry on business as a moneylender from the 11th September, 1959, when the old Moneylenders Ordinance was repealed by the Moneylenders Ordinance, 1959, (hereinafter referred to as the new Ordinance), and resumed his moneylending business in December, 1962, when he became a licensed moneylender under the new Ordinance.

The plaintiff's claim was contested on two grounds. First, it was alleged by the defendant that the contract in respect of this loan was unenforceable by virtue of section 5 of the old Ordinance because the principal was shown as $1,000 in the promissory note when in fact it was only $700, and because a copy of the promissory note was not given to the defendant by the plaintiff. Secondly, it was alleged by the defendant that there was accord and satisfaction on the 1st December, 1961, when it was orally agreed between the plaintiff, the defendant, and the defendant's employers, Holiday, Cutler, Bath & Co., Ltd., that the employers should pay to the plaintiff $714 out of their own moneys in full settlement of all debts due to the plaintiff from the defendant, and the employers on the 1st December, 1961, paid to the plaintiff the sum of $714 accordingly.

As to the first ground, it was contended by counsel for the plaintiff that the old Ordinance having been repealed by the new Ordinance, the defendant could not rely on any of the provisions of the old Ordinance. Counsel cited *Surain Singh* v. *Yatim Eusope,*(1) and repeated the argument advanced in that case. As this point of law was not fully argued before me, I do not think it necessary or desirable for me to express my view thereon, nor do I consider it necessary or desirable to decide the questions of fact raised by the defendant as I find that the defendant succeeds on his second contention.

The second contention of the defendant was that there was accord and satisfaction of a loan

on the 1st December, 1961. On this issue the undisputed facts were these. The plaintiff sued the defendant in the Civil District Court in 1961 on a promissory note for $600. The defendant thereupon sought the advice and aid of his employers, and an attempt was made by them to come to a settlement with the plaintiff. Negotiations were conducted by Mr. Low Keng Cheong, their office manager and to some extent by their managing director, Mr. Holiday. The plaintiff was sent for and questioned by Mr. Low as to the defendant's total indebtedness to him. The plaintiff produced the promissory note for $600 and another for $300, and after some discussion agreed to settle both for $714. Mr. Low made out a cheque for $714 and took it to Mr. Holiday for signature and informed him that the plaintiff was willing to settle for $714. Mr. Holiday questioned the plaintiff as to whether he had any other promissory notes signed by the defendant. The plaintiff replied that he had none and that the whole matter would be settled for $714. It was only then that Mr. Holiday signed the cheque for $714, which was handed to the plaintiff in return for the two promissory notes. The plaintiff also gave the assurance that he would take steps to have the District Court summons withdrawn. The plaintiff conceded under cross-examination that he had deliberately refrained from disclosing to Mr. Holiday the existence of the promissiory note for $1,000 which is the subject matter of the present suit. He gave as his reason that he was afraid that, if he disclosed it, Mr. Holiday might not settle the defendant's debts and might even advise the defendant to seek relief in bankruptcy. So he decided to produce the promissory notes for $600 and $300 and collect as much as he could from the defendant's employers, and to recover from the defendant, subsequently, the amount due on the promissory note for $1,000, and, if necessary, bring a further action.

It was argued on behalf of the plaintiff that the settlement which took place on the 1st December, 1961, was limited to the two promissory notes for $600 and $300; and that there was no settlement of the promissory note for $1,000, as it was not produced by the plaintiff on that day and the defendant's employers did not even know of its existence. I rejected this argument. I found that the $714 was paid by the defendant's employers in full settlement of the total indebtedness of the defendant to the plaintiff. That was the only basis on which the employers were prepared to make the payment. The plaintiff received the $714 after he had given the very clear assurance that he had no other claim against the defendant, and he knew that payment was made by the employers in full settlement of all his claims against the defendant.

I had next to consider whether the cheque given by the employers for $714 in satisfaction of all claims against the defendant for a larger sum was a complete satisfaction of all such claims. The House of Lords' decision in *Foakes* v. *Beer*,[2] is clear authority for the proposition that payment by a debtor of a smaller sum in satisfaction of a larger amount is not a good discharge of a debt. On the other hand it was held by the Court of Appeal in *Bidder* v. *Bridges*,[3] that though the payment of a smaller sum cannot be a good consideration for accord and satisfaction of a claim for a larger one, yet if there is anything which can be a new consideration and a new benefit to the person entitled to the larger sum, that would support accord and satisfaction. A cheque given by a third party for a smaller sum in satisfaction of a claim for a larger sum was held to be a complete satisfaction of the debt. Lopes L.J. explained the law to be as follows:

> "I take it the law is quite clear that the payment of a smaller sum cannot be pleaded as accord and satisfaction to a claim for a larger sum; it is only a payment *pro tanto*. In *Cumber* v. *Wane* (1 Str. 426) it was laid down that giving a promissory note for £5 could not be pleaded as accord and satisfaction where the claim was for a debt of £15, but that decision was modified by the case of *Sibree* v. *Tripp* (13 M. & W. 23), where it was held that a negotiable security may operate, if so given and taken, in satisfaction of a debt of greater amount; the circumstance of negotiability making it, in fact, a different thing and more advantageous than the original debt which was not negotiable.
>
> Now it is also law that the giving of a negotiable instrument for a smaller sum by a third party would support accord and satisfaction. The principle which runs through all the cases is this, that there is a possibility of a benefit accruing to the creditor which is the consideration, for the relinquishment of the residue of the debt."

The facts of the present case clearly come within that principle. Here there was a cheque given by a third party in full settlement of the total indebtedness of the defendant. On that ground alone, in my view, the defendant was entitled to succeed on his second contention.

Counsel for the defendant sought to rely upon considerations of equity and cited *Hirachand Punamchand* v. *Temple*,[4] in support of his contention that to allow the plaintiff to succeed in this action would constitute a fraud on the third party, the defendant's employers. In *Hirachand Punamchand's* case the father of a debtor wrote to the creditor, offering an amount less than that of the debt in full settlement of the debt, and enclosing a draft for that amount, and the creditor cashed and retained the proceeds of the draft, and afterwards brought an action against the debtor for the balance of the debt. It was held that the creditor must be taken to have accepted the amount received by him on the terms upon which it was offered and

therefore he could not maintain the action. The ground of the decision was that:

"If a stranger pays a part of a debt in discharge of the whole, the debt is gone because it would be a fraud on the stranger to proceed."

On the facts before me I was of the view that the contention of counsel for the defendant was well-founded.

It was for these reasons that I dismissed this action with costs.

Action dismissed.

Solicitors:—*R. Ramason; L. Rayner.*

LOO LAU CHAI & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Buttrose J.) November 25, 1963]

[Singapore — Magistrate's Appeal Nos. 97 & 98 of 1963]

Customs Ordinance 1960, s.113(1)(a) and (d)—Delivery of uncustomed goods—Views of locus in quo—Delivery from or in connection with ships—Whether conviction proper.

The appellants were convicted of being concerned in the delivery of uncustomed goods to wit dutiable cigarettes which were not under customs control under section 113(1)(a) of the Customs Ordinance and fined $5,000 each in default 12 months imprisonment. The first appellant paid the fine but the second appellant did not and he had served more than half his sentence. On appeal it was argued for the appellants (a) that the learned District Judge was wrong in refusing an application made during the trial to view the *locus in quo* (b) that the learned District Judge erred in law in amending the charge to one under section 113(1)(a) of the Ordinance which applies only to delivery from or in connection with ships.

Held: (1) in this case no useful purpose would be served by viewing the *locus in quo* as photographs depicting the *locus in quo* were before the District Judge and the locality and physical features were described by the witness;

(2) section 113(1)(a) of the Ordinance relates to delivery from or in connection with ships and not to the facts of the present case. As there was the clearest possible evidence of an offence under the Ordinance a conviction under section 113(1)(d) substituted.

Case referred to:—

(1) *Stirland* v. *Director of Public Prosecutions* [1944] A.C. 315, 328.

MAGISTRATE'S APPEAL.

Peter Lee for the 1st appellant.

C. H. Koh for the 2nd appellant.

Francis Seow (Sr. Crown Counsel) for the respondent.

Cur. Adv. Vult.

Buttrose J.: The two appellants were convicted of being concerned in the delivery of uncustomed goods, namely, a large quantity of dutiable cigarettes which were not under customs control under section 113(1)(a) of the Customs Ordinance, 1960, (No. 44 of 1960) hereinafter referred to as 'the Ordinance'. They were each sentenced to pay a fine of $5,000 in default 12 months imprisonment. The 1st appellant paid the fine but the 2nd appellant did not and has now served more than half his sentence. They now appeal.

There were only two grounds of any substance argued on the appeal:—

(1) That the learned District Judge was wrong in refusing the application made during the trial to view the *locus in quo* where, so it was said, the physical features were an important consideration in arriving at a decision on the material issues. With this ground was involved the general submission that on a proper appraisal of the prosecution evidence the police witnesses could not, at the time and in the circumstances, have seen what they allege they did; and

(2) That the learned District Judge erred in law in amending the charge to one under section 113(1)(a) of the Ordinance which applies only to delivery from or in connection with ships.

With regard to the first point the position was that the offence was committed at 5.30 a.m. on the 31st July, 1962, just inside the entrance of a small lane off Phillip Street. A witness was called by the 1st appellant for the purpose of giving evidence as to what he was able to see when he went to the scene of the crime some months later at the same time. An attempt, apparently, was made to reconstruct the crime to some extent by the witness placing his car in the lane at or about the same position as the suspect car. This scene however was not enacted till the 30th April 1963, some 9 months after the offence was alleged to have been committed.

The learned District Judge held that this evidence was inadmissible and in my view his decision was right. It was not a question of what a witness could or could not see at the scene of the crime 9 months later but what the police witnesses saw at half past five on the morning in question. It would in any event be impossible to ensure that precisely the same conditions prevailed on both occasions.

On the learned District Judge ruling that the evidence was inadmissible counsel for the 1st appellant applied for a view. This was refused by the learned District Judge and in my judgment he was right in so doing. It is difficult to see what useful purpose could be served by such a course. Photographs depicting the *locus in quo* were before him and the locality and physical features were described by the witnesses. If we viewed the scene at 5.30 in the morning some ten months after the incident the same objections would apply as in the case of the witness and might indeed have led to an erroneous conception of the situation.